IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 10, 2008 Session

STINSON, INC. v. JOHNATHAN ANDREW COOK

Appeal from the Chancery Court for Sumner County
No. 2005C-56 Tom E. Gray, Chancellor

No. M2006-02302-COA-R3-CV - Filed January 24, 2008

The two parties to this appeal entered into a joint venture based upon an oral agreement, the purpose of which was to construct a house with the intent to sell the house on the open market. Unfortunately, no one agreed to purchase the house, and thus, pursuant to the venturers' oral agreement, the defendant purchased the house "at cost." The plaintiff sued the defendant contending it was entitled to an additional $30,000 based upon an alleged subsequent agreement by the defendant to purchase the lot upon which the house was constructed for $50,000 even though the plaintiff's cost to purchase the lot was $20,000. The trial court found the parties' agreement provided that the defendant would purchase the house and lot at cost, that the cost of the lot was $20,000, and that the defendant had paid the plaintiff all it was entitled to receive. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY D. BENNETT, J., joined.

Stephen C. Knight and Nader Baydoun, Nashville, Tennessee, for the appellant, Stinson, Inc.

Curtis Maddin Lincoln, Hendersonville, Tennessee, for the appellee, Johnathan Andrew Cook.

MEMORANDUM OPINION[1]

In 2002, a homebuilder, Stinson, Inc., which was experiencing some financial problems that impaired its credit, entered into an oral joint venture agreement with its employee, Johnathan Cook, the common purpose of which was to construct a house, which they intended to sell on the open

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[1] Tenn. Ct. App. R. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

market. Pursuant to their agreement, the lot that Stinson owned would be conveyed to Cook after which Cook would obtain construction financing in his name and based upon his credit to facilitate the construction of the house on the lot at issue.

At the inception of their joint venture, it was agreed that if the parties could not sell the house to a third party after a reasonable period of time, that Cook would purchase the house and the lot with all improvements thereon "at cost." After a couple of failed attempts to close on the sale of the house to third parties, the parties took the house off of the market and Cook proceeded to pay Stinson's costs to construct the house. Most of the construction costs were funded by the construction loan Cook obtained in 2002. For purposes of this appeal, it is undisputed that Stinson purchased the lot at issue at a cost of $20,000 to Stinson. It is also undisputed that Cook paid Stinson all of its costs related to the purchase of the lot and the construction of the house with the exception of $30,000 Stinson alleges is still owed for the lot. What is disputed is whether the parties entered into a subsequent agreement by which Cook agreed to pay $50,000 for the lot instead of Stinson's actual cost, which was $20,000. The sole basis upon which Stinson relies to assert that the parties subsequently agreed to amend the joint venture agreement is the 2002 sale of the lot to Cook. The 2002 sale of the lot to Cook was necessitated by the fact Stinson could not qualify for the construction loan due to Stinson's bad credit. Thus, the parties conveyed title to Cook so that he could obtain the construction loan.

The trial court heard the case without a jury. There was little evidence and the evidence was essentially undisputed. The only dispute pertained to the meaning or interpretation of the 2002 closing documents and whether they constituted a new agreement or a modification of the oral joint venture agreement regarding the purchase of the lot. After hearing from all of the parties and considering the evidence, the trial court made findings and conclusions. They are as follows:

> In this matter, the Court finds that Jimmy Stinson on behalf of Stinson, Incorporated and Johnathan Cook by express agreement entered into a joint venture.
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> The agreement was that Johnathan Cook would obtain a construction loan on his credit and that he would purchase a lot at the cost of Stinson, Incorporated, and that Johnathan Cook would finance the building of a house which would be on the market from commencement of construction. And that if the house sold, then Stinson, Incorporated, and Johnathan Cook would share equally the profit. And if the house did not sell, then Johnathan Cook would make the purchase of the house at the cost, at its cost.
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> By quit claim deed on the 18th day of April, 2002, Plantation Properties, Incorporated quit claimed all interest in lot 157 to Stinson, Incorporated, for actual consideration of $20,000. On the 18th day of April, 2002, Stinson, Incorporated, conveyed lot 157 to Johnathan Cook for actual consideration of $50,000 on that day.
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> Johnathan Cook on April 18th – and that may not be the right date, it might be the day before, but on April 18th, I believe, the same year, 2002, obtained a loan

for $209,550. And Stinson, Incorporated received its payment of $50,000 from the loan obtained by Mr. Cook.

And Mr. Cook was a superintendent for Stinson, Incorporated. And while as an employee of Stinson, Incorporated, meaning while on the clock with Stinson, Incorporated, Johnathan Cook scheduled subcontractors and supervised work on the house being built on lot 157.

And the house was up for sale. Two offers by third parties were made on it – on that property. Mr. Cook testified two contracts were made and both fell through; nevertheless, [sic] the house didn't sell.

And from the evidence in exhibits made at trial, Stinson, Incorporated, on April the 19th, 2002, on a Plantation Property general ledger entered that lot 157 had that money due on the loan was $30,000; however, there is no evidence before this Court as to what the actual cost by Plantation Properties for lot 157.

And Mr. Stinson's testimony was that there was the juggling of money. The job ledger for lot 157 prepared by Stinson, Incorporated, shows the lot purchase at $20,000. Counsel for the plaintiff argues that there was an erroneous entry; however, it was also the actual consideration paid according to the oath of Mr. Stinson.

Mr. Cook, on the job ledger, was given credit for $170,000.00 as being paid and the job ledger shows Jimmy Stinson and John Cook for $10,000; $180,000 totally paid. The Court doesn't have knowledge or information about the $10,000, but it was a credit for $180,000. And that there was $21,819.50 left owing.

When the house didn't sell, Johnathan Cook and Rhonda Cook closed and Stinson Builders was paid $21,819.50. And I use Stinson Builders because that's the way it was on the check; it was Stinson Builders.

Now, to establish a joint venture relationship between two parties there must be a company purpose, some manner of agreement among them and equal rights on the part of each to control the venture as a whole with any relevant instrumentality; that Dewberry versus Maddox at 755 SW2d 50.

There was a common purpose. That common purpose was to build a house and make a profit and that was primarily the purpose. Secondary purpose was if it didn't sell, Mr. Cook got the house at cost. These parties did have an agreement. That agreement was an express agreement.

And two times in this matter, the lot in question, 157, was shown of an actual cost of $20,000. It was shown on the oath of Mr. Stinson upon the transfer from Plantation Properties to Stinson, Incorporated, and it was shown on the Stinson job

ledger sheet. And by a preponderance of the evidence, the cost of the lot was $20,000.

Judgment is entered in favor of the Defendant, Johnathan Cook, and cost to the Plaintiff.

As the foregoing reveals, the trial court found that the parties' agreement provided that Cook would purchase the lot "at cost," that the lot cost Stinson $20,000, and that Cook paid Stinson all of its costs, including $20,000 it was entitled to receive for the cost of the lot. Moreover, the court did not find that the parties had entered into a subsequent agreement or that they had amended their joint venture agreement. We find the evidence does not preponderate against the trial court's findings and conclusions. Therefore, we affirm the trial court in all respects.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Stinson, Inc. and its surety.

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FRANK G. CLEMENT, JR., JUDGE